

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Civil Law and Motion Tentative Rulings  
Hon. Donald Proietti  
Courtroom 8

627 W. 21<sup>st</sup> Street, Merced

April 22, 2015  
8:15 a.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4240 or appear in person at the office of the unlimited civil clerk before 4:00 p.m. to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying CourtCall of your intent to appear does not satisfy the requirement of notifying the court.

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Case No.	Title / Description
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CV001094	Everett Baker, et al. vs. KB Homes, et al.
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OSC re Dismissal

**Appearance required.**

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CVM018329	Bryan Borges, et al. vs. Daniel L. Silva, et al.
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Review Hearing re Default Judgment

**Appearance required.**

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CVM019553 Elizabeth Gutierrez vs. Sang Hyuk Park, et al.

OSC Why Sanctions in the Amount of \$100 Should Not Be Imposed Against Attorney S. Ramazzini for Failure to Appear at CMC

**Appearance required.**

Case Management Conference – Special Set

**Appearance required.**

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14CV-00303 James Grimes, et al. vs. Comcast Corporation, et al.

Case Management Conference – Special Set

**Appearance required.**

Motion to Strike Portions of Complaint

**The parties' requests for judicial notice are GRANTED in accordance with Evidence Code section 452, subdivision (d).**

**The motion to strike by defendant Comcast Cable Communications Management LLC is GRANTED as to paragraph 44 of the Complaint. The first sentence of paragraph 44 is at odds with the California Supreme Court's ruling in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4<sup>th</sup> 1004, 1017. Plaintiffs offer no argument in opposition to this portion of the motion. The Court grants plaintiffs leave to amend within ten days of this ruling.**

**The motion to strike portions of the complaint based on the doctrine of equitable estoppel is DENIED. The allegations that Comcast had unlawful "policies, patterns, and practices" resulting in violations of wage and hour law are not precluded by collateral estoppel based on any findings by the Contra Costa Superior Court in its December 15, 2012 Decertification Order. "The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious." (*Hall v. Rite Aid Corp.* (2014) 226 Cal.App.4<sup>th</sup> 278, 286.) Moreover, Judge Goode's order plainly states, "This ruling neither makes nor implies any decision on any question of the merits of the litigation." (Decertification Order, p. 11:8-14.)**

**The motion to strike portions of the complaint concerning equitable tolling of the statute of limitations following the date of the decertification order is DENIED. While federal law undoubtedly supports defendant's position, defendant concedes that no California state court has considered the precise issue of whether the appeal of a decertification order extends the tolling period under California law. In the absence of contrary controlling authority or demonstrated prejudice to defendant, the Court is persuaded that public policy supports tolling until the decertification order becomes final following exhaustion of appeals.**

**The prevailing party is directed to prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, rule 3.1312, and to**

**provide notice thereof to the opposing party/counsel as required by law and the California Rules of Court. The order is to be submitted directly to Hon. Donald J. Proietti, Courtroom 8.**

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14CV-00440 In Re: 9621 Shaffer Rd, Livingston, CA

Hearing Other re Unresolved Claims

**Appearance required.**

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15CV-00933 Nicole Holmes vs. Christopher Hocking

Request for Civil Harassment Restraining Orders

**Appearance required.**

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15CV-00934 Theresa Cayous vs. Christopher Hocking

Request for Civil Harassment Restraining Orders

**Appearance required.**

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15CV-00935 Caroline Kutcher vs. Christopher Hocking

Request for Civil Harassment Restraining Orders

**Appearance required.**

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